

FP09-15 Executive Summary			
General Description	Proposal FP09-15 requests that a “no Federal subsistence priority” customary and traditional use determination be made for all fish in the Juneau road system area (all waters crossed by or adjacent to roads connected to the City and Borough of the Juneau road system). <i>Submitted by the Alaska Department of Fish and Game</i>		
Proposed Regulation	Southeastern Alaska Area—All fish—Customary and traditional use determinations		
	<i>Remainder of the Southeastern Alaska Area</i>	<i>Dolly Varden, trout, smelt, and eulachon</i>	<i>Residents of Southeastern Alaska and Yakutat areas.</i>
	<i>Remainder of the Southeastern Alaska Area</i>	<i>All other fish</i>	<i>No determination—all rural Alaska residents</i>
	<i>District 11—Juneau Road System Area. (All waters crossed by roads connected to the City and Borough of the Juneau road system.)</i>	<i>All fish</i>	<i>No Federal subsistence priority</i>
	<i>District 15—Juneau Road System Area. (All waters crossed by roads connected to the City and Borough of the Juneau road system.)</i>	<i>All fish</i>	<i>No Federal subsistence priority</i>
Southeast Regional Council Recommendation	Oppose		
Interagency Staff Committee Comments	See comments following the analysis.		
ADF&G Comments	Support		
Written Public Comments	None		

REGIONAL ADVISORY COUNCIL RECOMMENDATION FP09-15

SOUTHEAST REGIONAL ADVISORY COUNCIL

Oppose Proposal FP09-15. The Council determined that subsistence fishing in the Juneau area waters was appropriate and would not result in a conservation concern for any species. The proposal would not affect non-subsistence users but would be potentially detrimental to subsistence users. There was no evidence presented that a conservation concern currently exists or would potentially exist in the future.

Title VIII specifies the taking on public lands of fish and wildlife for non-wasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes. There is a continuing sport fishery on streams adjacent to the Juneau road system.

If this proposal was adopted, continued road construction in the Juneau area would increase the area closed to subsistence without action by the Council. The narrow interpretation of the eight criteria as described by the State is not valid. The Council interprets the regulations more broadly and agrees that there is sufficient evidence to support the continued customary and traditional use of this area by rural residents.

STAFF ANALYSIS FP09-15

ISSUES

Proposal FP09-15, submitted by the Alaska Department of Fish and Game (ADF&G), requests that a “no Federal subsistence priority” customary and traditional use determination be made for all fish in the Juneau road system area (all waters crossed by or adjacent to roads connected to the City and Borough of the Juneau road system).

A companion proposal (FP09-04) requests that no Federal subsistence fishing permits be issued for any streams flowing across or adjacent to the road systems within the City and Borough boundary of Juneau.

DISCUSSION

Proposal FP09-15 is similar to FP08-04, also submitted by ADF&G. The proponent noted that the previous request for a “no Federal subsistence priority” determination for the Juneau road system area was rejected by the Federal Subsistence Board (Board). The proponent submitted FP09-15 because, in the proponent’s view, the Board did not evaluate the eight factors describing customary and traditional use for each fish stock used by specific rural communities.

The Juneau road system is within fishing Districts 11 and 15 (**Map 1**). Currently, all rural residents of Southeastern Alaska and Yakutat areas have a positive customary and traditional use determination for Dolly Varden, trout, smelt, and eulachon for Districts 11 and 15. No determination has been made for salmon in Districts 11 and 15; therefore, all rural residents of Alaska may harvest salmon using Federal subsistence regulations.

The populated area of the Juneau road system is designated as nonrural under the Federal Subsistence Management Program¹. As a result, Juneau residents are not eligible to harvest fish and wildlife under Federal subsistence regulations. The proponent is concerned that fish stocks in Juneau area streams will be adversely impacted by a Federal subsistence fishery open to Federally qualified rural residents on the Juneau road system.

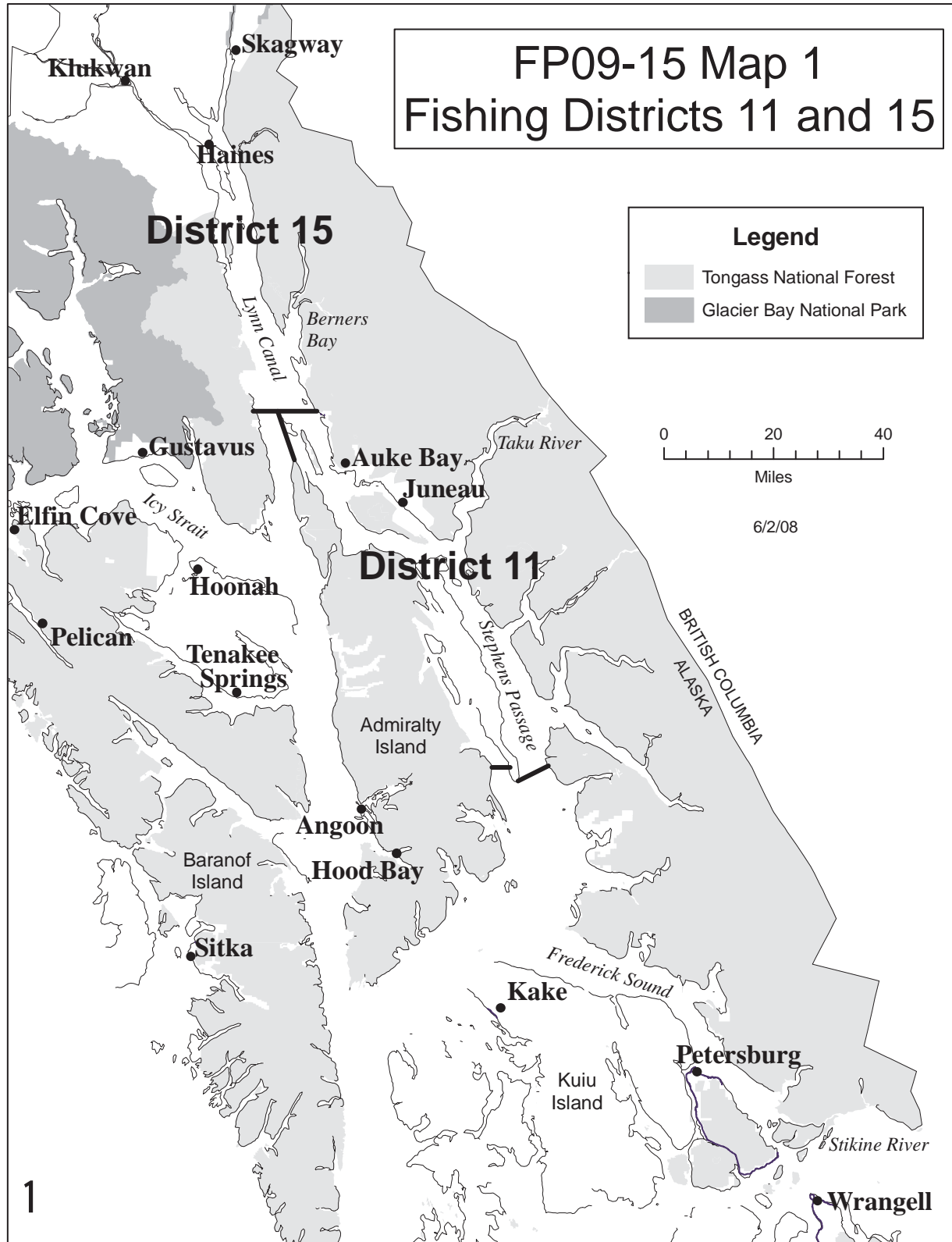
Existing Federal Regulation

Southeastern Alaska Area—All fish—Customary and traditional use determinations*

<i>Remainder of the Southeastern Alaska Area</i>	<i>Dolly Varden, trout, smelt, and eulachon</i>	<i>Residents of Southeastern Alaska and Yakutat areas.</i>
<i>Remainder of the Southeastern Alaska Area</i>	<i>All other fish</i>	<i>No determination—all rural Alaska residents</i>

Notes: *The proposal book did not list all of the customary and traditional use determinations for the “Remainder of the Southeastern Alaska Area,” thus they are listed here.

¹ The Juneau nonrural area includes the communities of Douglas and Auke Bay. However, the nonrural area does not extend the entire length of the road north of Juneau.



Proposed Federal Regulation

Southeastern Alaska Area—All fish—Customary and traditional use determinations

<i>Remainder of the Southeastern Alaska Area</i>	<i>Dolly Varden, trout, smelt, and eulachon</i>	<i>Residents of Southeastern Alaska and Yakutat areas.</i>
<i>Remainder of the Southeastern Alaska Area</i>	<i>All other fish</i>	<i>No determination—all rural Alaska residents</i>
<i>District 11—Juneau Road System Area. (All waters crossed by roads connected to the City and Borough of the Juneau road system.)</i>	<i>All fish</i>	<i>No Federal subsistence priority</i>
<i>District 15—Juneau Road System Area. (All waters crossed by roads connected to the City and Borough of the Juneau road system.)</i>	<i>All fish</i>	<i>No Federal subsistence priority</i>

Extent of Federal Public Waters

All fresh waters on the Juneau road system are within the exterior boundaries of the Tongass National Forest and are considered Federal public waters for the purposes of Federal subsistence fisheries management. For purposes of this discussion, the phrase “Federal public waters” is defined as those waters described under 50 CFR 100.3.

Background

When the Board makes a customary and traditional use determination, the uses of the resource in the area are described and analyzed. In this case, the specific locale raised as a concern by the proponent is the Juneau road system, an area situated within fishing Districts 11 and 15 (**Map 1**). The Juneau road system is estimated to be less than 10% of the area of these fishing districts. Fishing districts are the typical geographic descriptor for which the Board makes determinations in the Southeastern Alaska Area (36 CFR 242.24(a) (2) and 50 CFR 100.24(a) (2)).

Regulatory History

In the late 1980s the State of Alaska Joint Board of Fisheries and Game made customary and traditional use determinations that applied to individual communities and specific fish species in particular geographic areas. At that time, 12 Southeast Alaska communities—Angoon, Craig, Haines, Hoonah, Hydaburg, Kake, Kasaan, Klawock, Klukwan, Saxman, Sitka, and Yakutat—were recognized as having a customary and traditional pattern of use of various fish species in Southeast Alaska. The Joint Board did not make positive determinations for 17 other rural communities: Coffman Cove, Edna Bay, Elfin Cove, Gustavus, Hollis, Hyder, Meyers Chuck, Pelican, Petersburg, Point Baker, Port Alexander, Port Protection, Skagway, Tenakee Springs, Thorne Bay, Whale Pass, and Wrangell, or for any residents of the region living outside the boundaries of any organized community.

In 1999, the Board adopted the State’s customary and traditional use determinations for fish but modified them to include, at the request of the Southeast Alaska Subsistence Regional Advisory Council (Council), all species of salmon (FSB 2000a:13). As a consequence, customary and traditional use determinations for specific species of fish were adopted in all or portions of Districts 1, 2, 3, 5, 9, 10, 12, 13, and 14, but no specific determinations were made for Districts 4, 6, 7, 8, 11, and 15—the remainder area. Therefore, all

rural residents of Alaska are eligible to harvest fish under Federal subsistence regulations in the remainder area.

In 2000, Proposal FP01-22 requested that the customary and traditional use determination for cutthroat trout, rainbow trout, and Dolly Varden be extended to include all rural residents of Southeast Alaska, for the entire Southeastern Alaska Area geographically—as well as changes to methods, seasons, and harvest limits for these species. The Council recommended expanding the requested determination to include trout, Dolly Varden, smelt and eulachon. The Council also recommended expanding the requested determination to include all of Southeast Alaska² geographically (SERAC 2000:178).³ The Board expanded the customary and traditional use determination to include trout, Dolly Varden, smelt, and eulachon, but only to “the remainder area” of the Southeastern Alaska Area (FSB 2000b:4–15). “Retention of the existing customary and traditional use determinations would maintain opportunity for eligible subsistence users while the addition of the remainder area would recognize the uses of other eligible subsistence users until a review of existing information could be conducted to further refine the relationships between communities or areas and their uses of fish” (FSB 2000a:7, cf. 2000b:4–15). Review of the Council and Board transcripts and Council recommendations indicate that the Council consciously did not exclude the Federal public waters of the Juneau road system in the remainder area of the Southeastern Alaska Area.

Salmon/trout permits have been in place since 2002 and steelhead permits were established in 2005. Permit conditions address conservation concerns and provide for a subsistence priority for Federally qualified subsistence users. The fishery is monitored and management issues have been addressed by permit conditions such as increased minimum size limits and restricted methods and means. The conditions of permits in systems to receive special protection are determined by the local Federal fisheries manager in consultation with ADF&G (§____.27(i)(13)(xx)(A)) (SERAC 2005:290). To date, no fish have been reported harvested from the Juneau road system in the Federal subsistence harvest database (Larson 2008, pers. comm.).

The Board has chosen not to recognize customary and traditional use determinations for fish in any new subareas within fishing districts for Southeast Alaska. The Council also has chosen to support broad customary and traditional use determinations because rural residents often participate in subsistence while engaging in commercial activities throughout Southeast Alaska.

In 2005, Proposal FP06-31 was submitted to remove the current area-wide Federal subsistence fishing regulations for steelhead, cutthroat trout, and Dolly Varden in streams on or adjacent to the Juneau road system and replace them with State of Alaska sport fishing regulations. The stated impetus for the proposal was conservation concerns (SERAC 2005:304). At its January 2006 meeting, the Board rejected the proposal.

In 2007, Proposal FP08-04 was submitted by ADF&G requesting that a “no Federal subsistence priority” determination be made for customary and traditional use of fish for the Juneau road system area. This is the same request being analyzed here in FP09-15. The proponent is concerned that fish stocks in Juneau area streams could be impacted if even a few Federally qualified rural residents choose to travel to Juneau and subsistence fish on the Juneau road system (FSB 2007a:175). The Council stated that there was “no information presented that indicated that subsistence fishing in the Juneau area waters was inappropriate. . . . No need was seen to make a location-specific customary and traditional use determination for the

²The Southeastern Alaska Area is part of the Southeast Alaska region.

³The Board meeting book was in error regarding the Council’s recommendation (FSB 2000a:5-6).

Juneau road system” (FSB 2007a:174). At its December 2007 meeting, the Board agreed with the Council and rejected the proposal.

Community Characteristics

Subsistence studies indicate subsistence harvests of fish in Districts 11 and 15 by residents of Skagway, Klukwan, Haines, Tenakee Springs, Petersburg, and Wrangell (**Table 1**, **Map 2**, and **Map 3**). Summaries of these communities’ harvests of fish are presented in **Table 2** and **Table 3**. Although use is likely, these studies do not indicate subsistence harvests of fish by residents of the nearby communities of Hoonah, Gustavus, Excursion Inlet, and Angoon in Districts 11 or 15.

Table 1. Population of selected Southeast Alaska communities (2006 population, ADOL 2007; Origin, USDA 1997; and 2000 population, USDC 2007a).

Community	Origin	2000 Population	2006 Population
Skagway City	Traditional Tlingit	862	854
Klukwan CDP ¹	Traditional Tlingit	139	112
Haines Borough ²	Traditional Tlingit	2,392	2,241
Tenakee Springs City	Settled in 1916	104	109
Juneau City and Borough	Settled in 1880	30,711	30,650
Petersburg City	Settled in 1899	3,224	3,129
Wrangell City	Traditional Tlingit	2,308	1,911

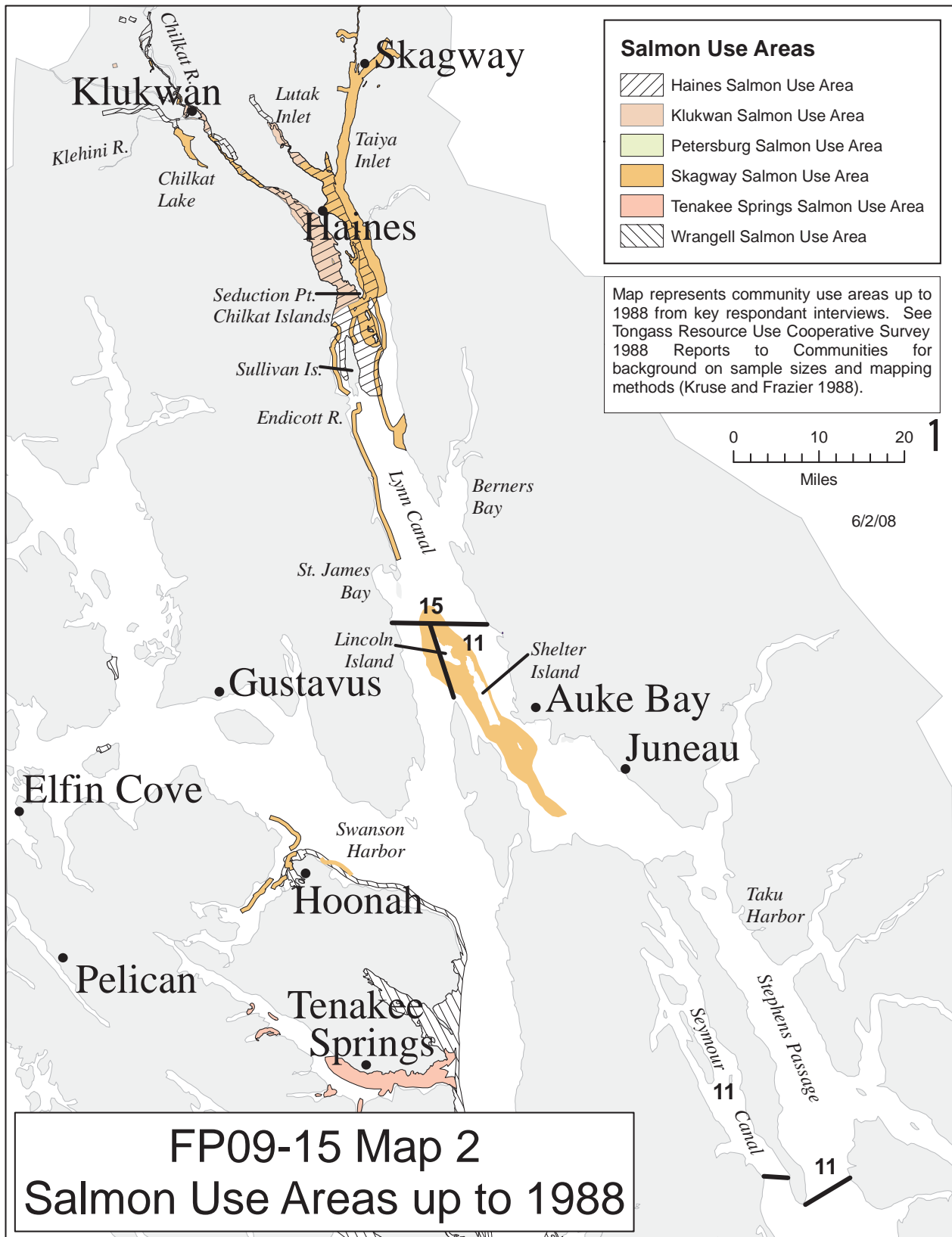
¹ CDP = Census Designated Place. The U.S. Census Bureau creates CDPs as counterparts of incorporated places. The boundaries of a CDP usually follow visible features or the boundary of an adjacent incorporated place.

² The City of Haines dissolved in October 2003 in favor of a boroughwide government.

Brief History of the Region

The areas around each community in the region were originally occupied by Tlingit, either in established villages, semi-permanent villages, or seasonal camps (**Map 4**). In the eighteenth century, Russian explorers and colonizers entered Alaska from the west establishing settlements in the Aleutian and Kodiak Islands. The first Russian settlement in Southeast was the outpost at Yakutat in 1795, followed by the major settlement at Sitka in 1799 (Schroeder and Kookesh 1988:15). Attracted by the sea otter trade, Russians had limited influence on the Tlingit largely because they were unable to conquer them outside of Sitka (Schroeder and Kookesh 1988:15). Sea otters were reaching depletion at the time of the sale of Alaska to the U.S. in 1867 (George and Bosworth 1988:15).

Other settlers began arriving in the region for the purposes of mining, missionary work, and whaling (George and Bosworth 1988:15). When gold was discovered in the Klondike, Yukon Territory, in the 1890s, Skagway was at a major route into the Interior and the gold fields. Settlers began arriving in large numbers beginning in the 1880s with the establishment of salmon canneries in Southeast Alaska. The commercial salmon fishing industry continues to be the economic mainstay of the regional economy. When a salmon cannery was constructed, people from established communities often stayed at sites near canneries seasonally in temporary structures, some of which became permanent communities (Smythe 1988:21). Communities also came together around established schools. Fox farming added to the economy beginning in the 1920s and continued into the 1940s, when demand dropped off after Word War II (Smythe 1988:26). Large scale logging began in the 1960s (Smythe 1988:21).



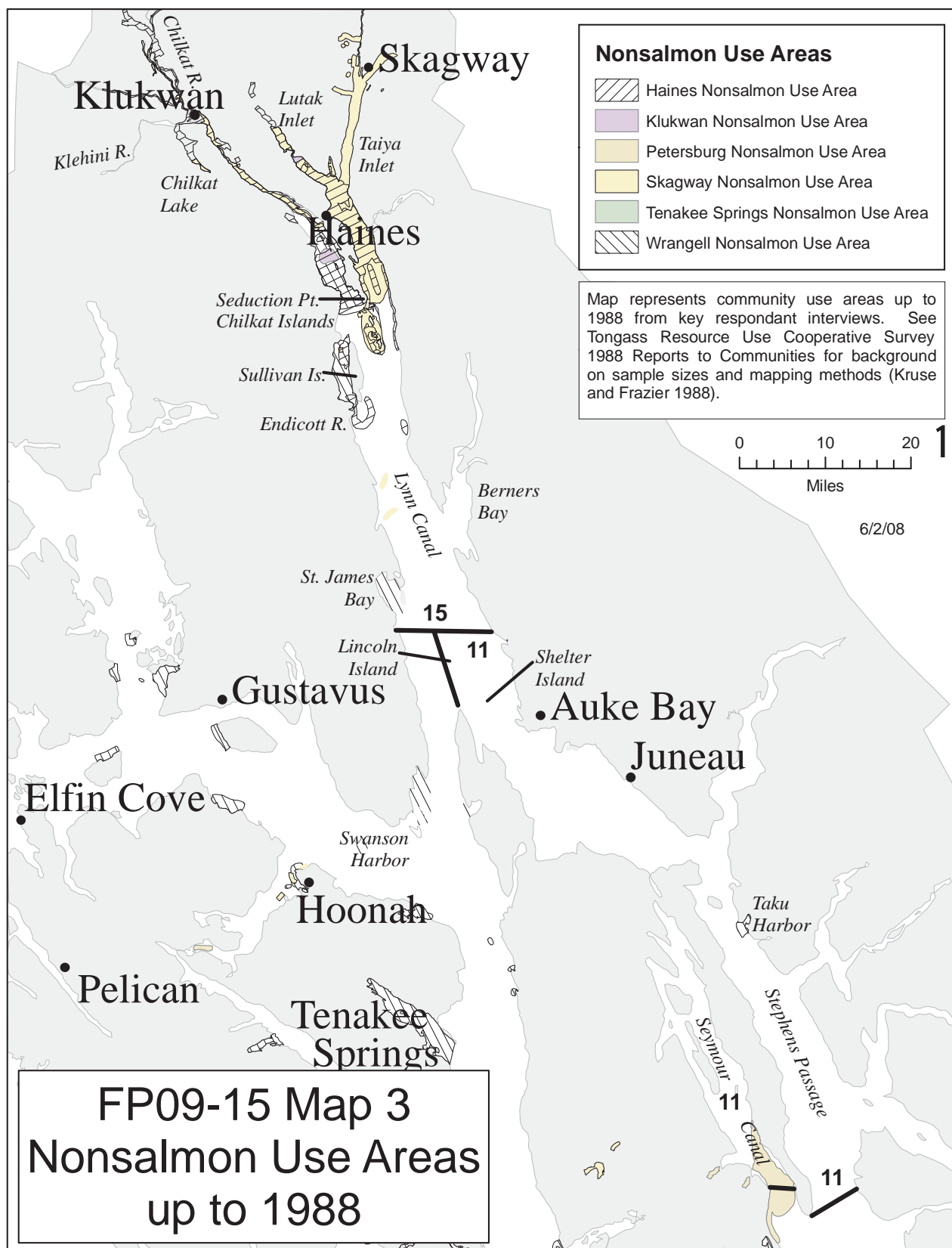


Table 2. The estimated harvest of salmon for home use, by community, most recent harvest surveys (ADF&G 2007; Paige 2002).

Species	Estimated Total		Per Household	Per Person	Per Household	Per Person
	Number	Pounds	Number	Number	Pounds	Pounds
Skagway 1987 (N=296)						
Salmon	2,011	10,291	9.9	3.5	50.5	17.7
Chum Salmon	333	2,063	1.6	0.6	10.1	3.5
Coho Salmon	282	2,168	1.4	0.5	10.6	3.7
Chinook Salmon	187	2,866	0.9	0.3	14.1	4.9
Pink Salmon	955	2,100	4.7	1.6	10.3	3.6
Sockeye Salmon	254	1,094	1.3	0.4	5.4	1.9
Klukwan 1996 (N=32)						
Salmon	5,460	29,715	151.7	50.6	825.4	275.1
Chum Salmon	1,008	6,975	28.0	9.3	193.8	64.6
Coho Salmon	690	3,753	19.2	6.4	104.3	34.8
Chinook Salmon	154	1,958	4.3	1.4	54.4	18.1
Pink Salmon	29	63	0.8	0.3	1.8	0.6
Sockeye Salmon	3,579	16,965	99.4	33.1	471.3	157.1
Haines 1996 (N=92)						
Salmon	22,937	125,619	29.1	10.6	159.6	57.8
Chum Salmon	2,957	20,463	3.8	1.4	26.0	9.4
Coho Salmon	3,754	20,420	4.8	1.7	26.0	9.4
Chinook Salmon	1,398	17,727	1.8	0.6	22.5	8.2
Pink Salmon	1,279	2,789	1.6	0.6	3.5	1.3
Sockeye Salmon	13,549	64,220	17.2	6.2	81.6	29.6
Tenakee Springs 1987 (N=31)						
Salmon	964	4,671	21.9	10.2	106.2	49.3
Chum Salmon	59	364	1.3	0.6	8.3	3.8
Coho Salmon	178	1,371	4.1	1.9	31.2	14.5
Chinook Salmon	89	1,357	2.0	0.9	30.8	14.3
Pink Salmon	555	1,222	12.6	5.9	27.8	12.9
Sockeye Salmon	83	358	1.9	0.9	8.1	3.8
Petersburg 2000 (N=125)						
Salmon	25,192	177,210	23.5	8.6	165.6	60.2
Chum Salmon	1,566	10,873	1.5	0.5	10.2	3.7
Coho Salmon	5,958	31,214	5.6	2.0	29.2	10.6
Chinook Salmon	9,056	106,222	8.5	3.1	99.3	36.1
Pink Salmon	4,828	12,018	4.5	1.6	11.2	4.1
Sockeye Salmon	3,784	16,883	3.5	1.3	15.8	5.7
Wrangell 2000 (N=98)						
Salmon	6,990	50,022	9.4	3.6	67.0	25.5
Chum Salmon	252	1,746	0.3	0.1	2.3	0.9
Coho Salmon	1,753	9,185	2.4	0.9	12.3	4.7
Chinook Salmon	2,424	28,430	3.2	1.2	38.1	14.5
Pink Salmon	389	968	0.5	0.2	1.3	0.5
Sockeye Salmon	2,172	9,694	2.9	1.1	13.0	5.0

Table 3. The estimated harvest and use of eulachon, Dolly Varden, cutthroat trout, rainbow trout, and steelhead¹ for home use, by community, most recent harvest surveys (ADF&G 2007, Paige 2002).

Species	Percentage of Households				Estimated Number Harvested			Estimated Pounds Harvested		
	Using (%)	Harvesting (%)	Receiving (%)	Giving (%)	Total	Per	Per	Total	Per	Per
						House-	Person		House-	Person
						hold			hold	
Skagway 1987 ^a										
Eulachon	8%	6%	3%	3%	1512	7.4	2.6	189	0.9	0.3
Dolly Varden	39%	24%	16%	7%	1,132	5.5	1.9	3,057	15.0	5.3
Klukwan 1996										
Eulachon	81%	61%	58%	58%	211,104	5,861.0	1,951.0	26,390	733.1	236.7
Dolly Varden	61%	58%	36%	48%	386	10.7	3.6	1,041	28.9	9.3
Cutthroat Trout	16%	16%	10%	13%	69	1.9	0.6	103	2.9	0.9
Rainbow Trout	16%	13%	10%	10%	58	1.6	0.5	116	3.2	1.0
Steelhead	7%	3%	3%	0%	1	0.0	0.0	10	0.3	0.1
Haines 1996										
Eulachon	40%	29%	14%	16%	858,960	1,094.0	396.0	107,371	136.3	49.9
Dolly Varden	47%	37%	14%	10%	6,507	8.3	3.0	17,570	22.3	8.2
Cutthroat Trout	18%	17%	1%	2%	856	1.1	0.4	1,284	1.6	0.6
Rainbow Trout	3%	2%	1%	0%	203	0.3	0.1	407	0.5	0.2
Steelhead	8%	5%	2%	1%	59	0.1	0.0	504	0.6	0.2
Tenakee Springs 1987 ^a										
Dolly Varden	39%	32%	10%	19%	471	10.7	5.0	1,272	28.6	13.4
Petersburg 2000										
Dolly Varden	17%	15%	3%	5%	2,448	2.3	0.8	6,610	6.2	2.2
Cutthroat Trout	17%	15%	3%	3%	1,267	1.2	0.4	1,900	1.8	0.6
Steelhead	3%	2%	2%	0%	265	0.2	0.1	2,256	2.1	0.8
Wrangell 2000										
Eulachon	5%	1%	4%	1%	7,622	10.2	3.9	1,906	2.6	1.0
Dolly Varden	9%	7%	2%	2%	899	1.2	0.5	2,429	3.3	1.2
Cutthroat Trout	30%	24%	9%	9%	3,964	5.3	2.0	5,946	8.0	3.0
Rainbow Trout	10%	8%	3%	4%	907	1.2	0.5	1,814	2.4	0.9
Steelhead	16%	4%	13%	8%	107	0.1	0.1	907	1.2	0.5

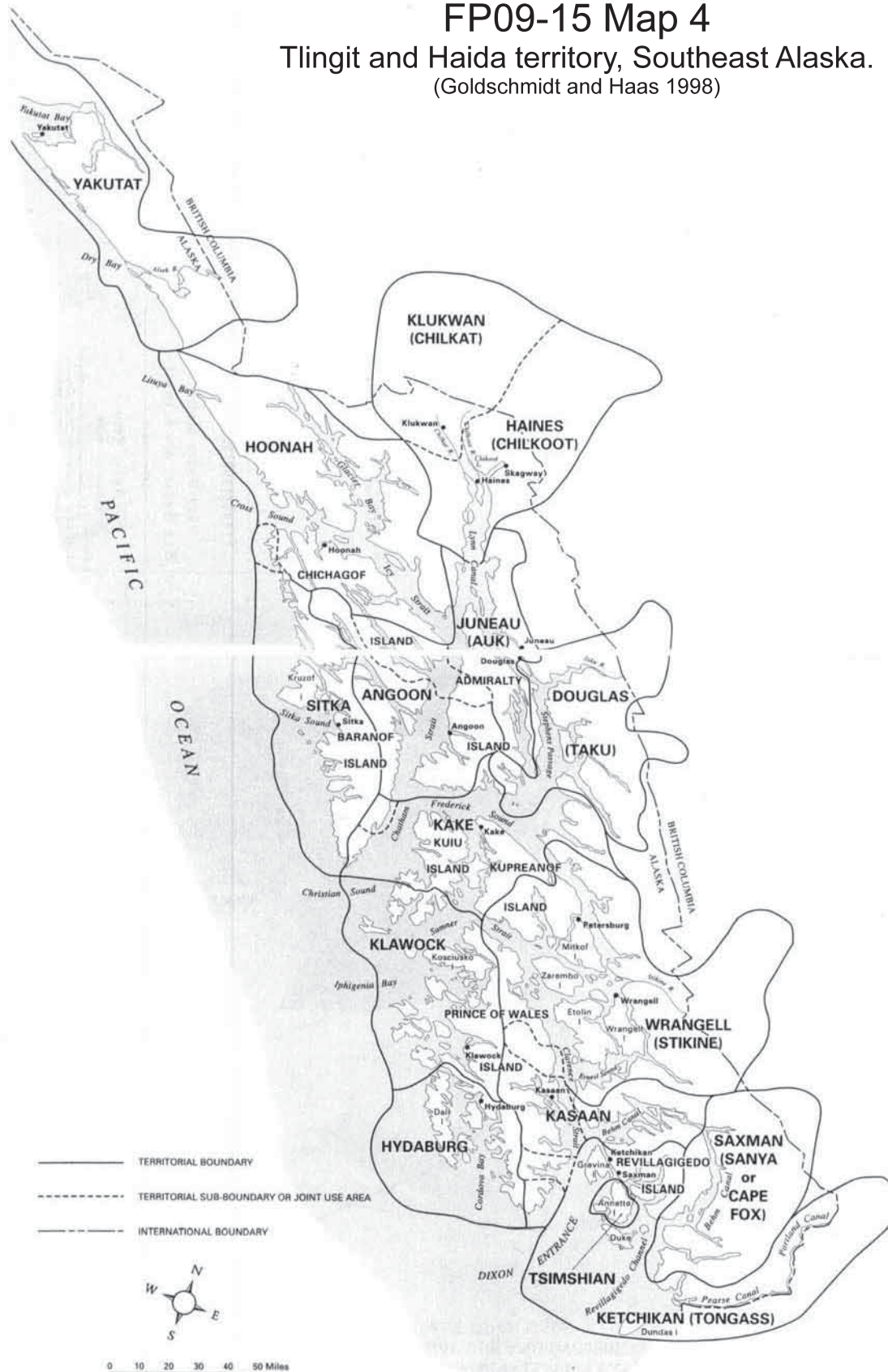
^a The 1987 household harvest surveys for Skagway and Tenakee Springs did not collect information on cutthroat trout, rainbow trout, or steelhead (Betts et al. 1999b).

In the 1880s, canneries often acknowledged Tlingit clan rights in some drainages, and some canneries made payment for the right to fish in owned streams, but this practice was discontinued early in the history of the industry (George and Bosworth 1988:29–30). Severe over-harvesting with seines and fish traps eliminated many runs by the late 1930s. Commercial salmon traps, fisheries, and canneries were followed by fisheries for halibut and herring for bait, and later salted herring, red king crab beginning in the 1950s, and black cod in the 1930s and 1950s. In 1925 there was a commercial fishery for Dolly Varden (Smythe 1988:25). The introduction of large cold storage facilities at communities with room for large buying scows, in Petersburg for example, further expanded fisheries.

Brief Community Descriptions

This section provides brief descriptions of the communities harvesting fish in Districts 11 and 15, as documented in subsistence use studies (Betts 1994; Betts, Kookesh et al. 1999a, 1999b, 1999c, 1999d;

FP09-15 Map 4 Tlingit and Haida territory, Southeast Alaska. (Goldschmidt and Haas 1998)



Goldschmidt and Haas 1998; and Paige 2002). Information on these communities' use areas is provided in the section on Use Areas.

Skagway

Skagway, located in District 15, is situated on the mainland at the extreme northern end of Lynn Canal, where the Skagway and Taiya rivers enter Taiya Inlet, approximately 15 miles north of Haines (**Map 1**) (Paige 2002:291). The location of Skagway was once the site of a Chilkat Tlingit village (Betts, Kookesh et al. 2000; Goldschmidt and Haas 1998:32) (**Map 5**). Other seasonal camps and smokehouses existed along the Skagway River, an area encompassed by Unit 1D. Chilkat Tlingit controlled this area that includes what is known today as the Chilkoot Trail, the trade route over Chilkoot Pass to the Canadian Interior. Trade with the Canadian Interior was supervised by Tlingit into the twentieth century. Gold was discovered in the Klondike in the 1890s and the Chilkoot Trail was the most accessible route to the gold fields. The discovery of gold attracted miners, and soon a railway over White Pass superseded the trail. Skagway became Alaska's first incorporated city in 1900. When the gold rush waned, other industries, such as independent, local mining and tourism, replaced it. Tourism has become an increasingly important factor in Skagway's economy (Betts et al. 2000). In 1978 the South Klondike Highway opened into the Interior.

Klukwan

Klukwan, located in Unit 1D, is situated on the north bank of the Chilkat River, 22 road miles north of Haines at the northern end of Lynn Canal (**Map 1**) (Paige 2002:167). Klukwan is a Chilkat Tlingit village of long standing and the principal town of the Chilkat Tlingit, whose territory generally includes the Chilkat River and its upper drainages and the Lynn Canal area to Berners Bay (Betts et al. 1999a) (**Map 5**). Several salmon canneries were located along Chilkat Inlet beginning in 1882. The nearby Dalton Trail was a route to the Canadian Interior used by many during the Klondike gold rush in the 1890s. However, the village has remained predominantly Tlingit. In 1942 the Haines Highway was completed into the Interior, which connected Klukwan to this road system (Betts et al. 1999a).

Haines

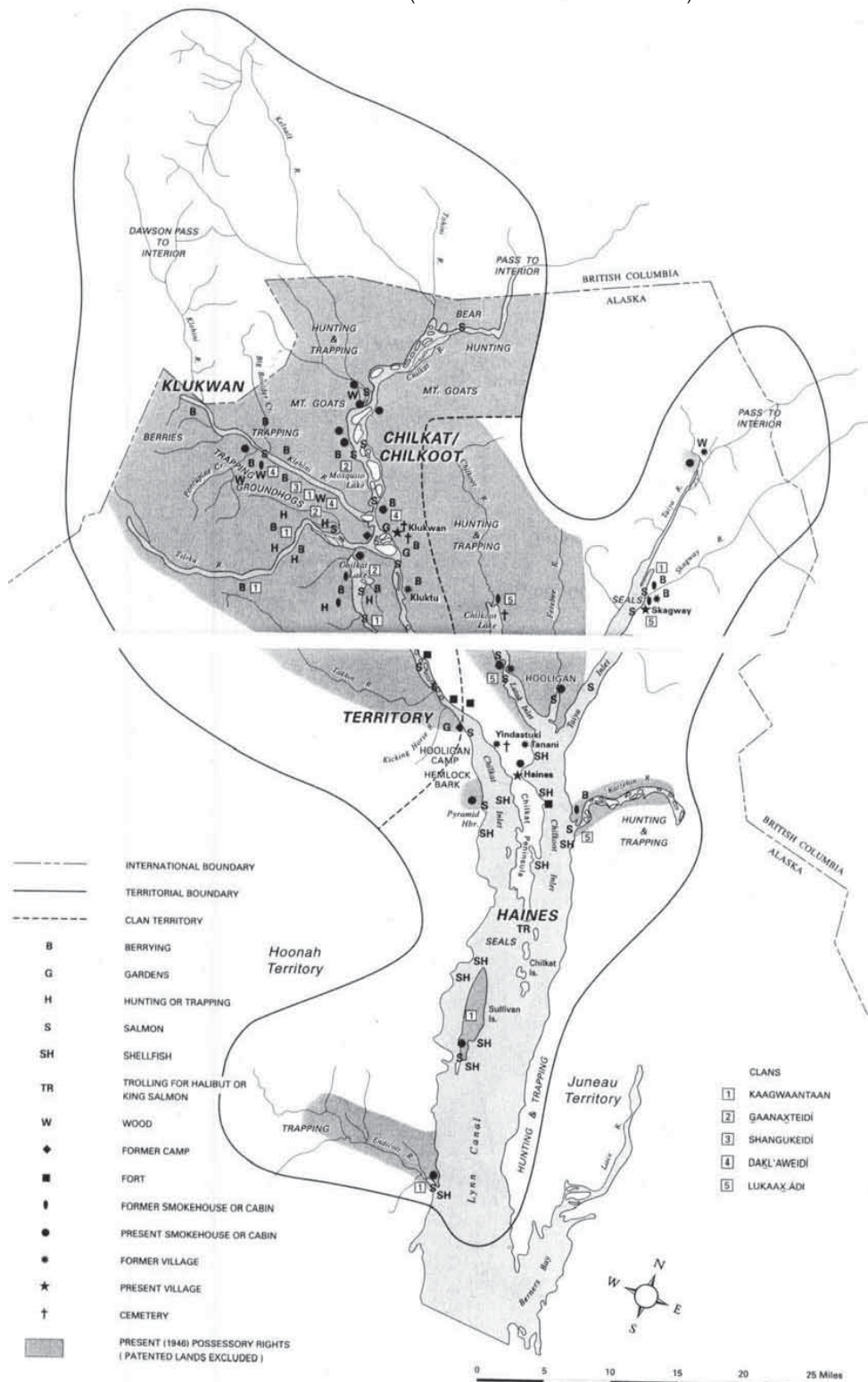
Haines, located in Unit 1D, is situated at the mouth of the Chilkat River at the northern end of Lynn Canal, 80 air miles northwest of Juneau (**Map 1**). The communities of Haines and nearby Klukwan were originally occupied by Chilkat Tlingit who had villages located throughout the area (**Map 5**). People from Haines and Klukwan shared land and waterway ownership in the Chilkat Tlingit territory, which includes the shores of Lynn Canal and its tributaries south to Berners Bay (Paige 2002:75). A United States military base opened in Haines in 1904 and operated through 1945. By the 1990s most canneries had closed and the initial growth of the community from the timber industry had slowed as the timber industry declined. The Haines economy is relying increasingly on tourism.

Tenakee Springs

Tenakee Springs, a small community noted for its natural hot spring, is located along Tenakee Inlet on the east side of Chichagof Island (**Map 1**). It is in the traditional territory of Angoon Tlingit (**Map 6**). Betts et al. (1999b) notes that the community is situated on the location of historical Tlingit settlements. There is an overland route to Hoonah from Tenakee Springs. In the late 1800s, prospectors and miners began living at this location seasonally. A permanent community of new settlers developed as salmon and crab canneries began to operate in the Tenakee area, in 1916; the economy of the community continues to be dominated by the commercial fishing industry and, to a lesser extent, logging (Betts et al. 1999b).

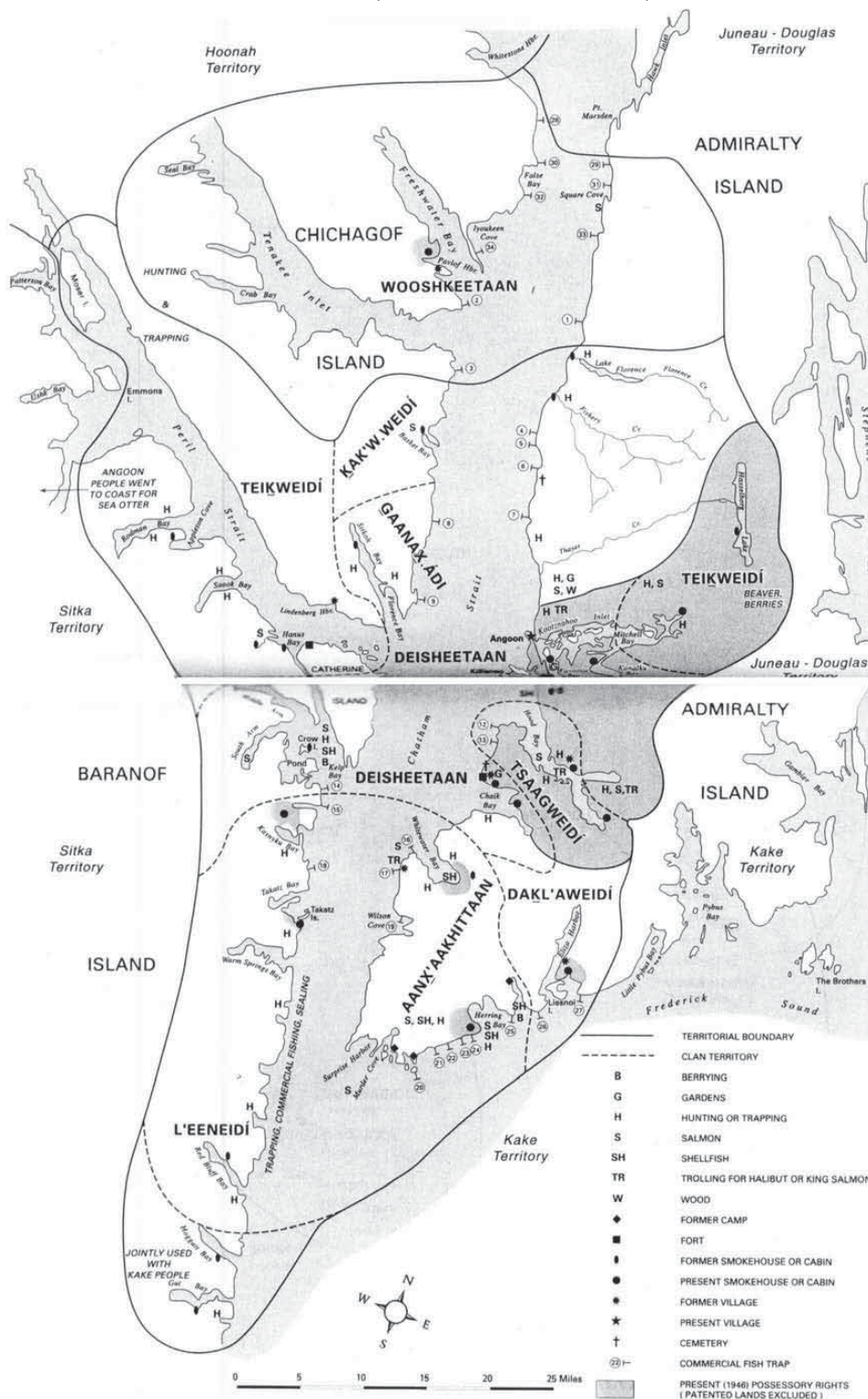
FP09-15 Map 5

Chilkat (Klukwan-Haines) Tlingit territory, showing use and ownership, pre-1946.
(Goldschmidt and Haas 1998)



FP09-15 Map 6

Angoon Tlingit territory, showing use and ownership, pre-1946.
(Goldschmidt and Haas 1998)



Juneau Area

The Juneau area is not under consideration in this analysis because it is nonrural and residents are not eligible to harvest fish under Federal subsistence regulations. It should be noted, however, that prior to the establishment of the community of Juneau in about 1880, Auk and Taku clans (Tlingit) resided in the area that now includes the Juneau road system and whose traditional territory stretches from the mainland at Berners Bay to portions of Admiralty Island and Lynn Canal to the north (**Map 7**). Both groups resided in numerous camps and villages in the Juneau area. One, in particular, located at Swanson Harbor, at the confluence of Icy Strait and Lynn Canal, was apparently a village jointly used by the Chilkat, Auk, and Hoonah people as a trading center. Taku also traveled inland up the Taku River. Various clans held ownership of resource harvest areas. Many within the Auk and Taku clans moved into the developing town of Juneau once gold was discovered there in 1880 (Goldschmidt and Haas 1998:37). Thus, it is clear that before the establishment of the town of Juneau, the Juneau area was used by the Tlingit for harvesting subsistence resources.

Petersburg

Petersburg is situated at the north end of Mitkof Island on Wrangell Narrows (**Map 1**). The town of Petersburg grew up around a cannery established in 1899, on the northwest shore of Mitkof Island on Wrangell Narrows (Betts et al. 1999c). The community was established predominantly by immigrants who had come directly from Europe, particularly Norwegians. Prior to Petersburg's development by homesteaders and fishermen at the turn of 20th century, Tlingit use of the area occurred at many small settlements. As fish camps or seasonal harvest and production sites, they were part of the traditional land use pattern of Tlingit society (Betts et al. 1999c; Goldschmidt and Haas 1998:73). Along with the evolution of the commercial fishing industry, in which Petersburg has always been a leader in Southeast Alaska, a larger Tlingit community developed in the expanding town. This Indian community has been a permanent and stable component of the town throughout its development. Prior to the founding of the cannery, the Wrangell Tlingit shared control of Frederick Sound with Kake Tlingit (**Map 8**). Salmon were harvested at a creek, across from present-day Petersburg, which belonged to a Wrangell clan (see description of the Wrangell territory below). Commercial fishing dominates the local economy (Betts et al. 1999c; Goldschmidt and Haas 1998:73).

Wrangell

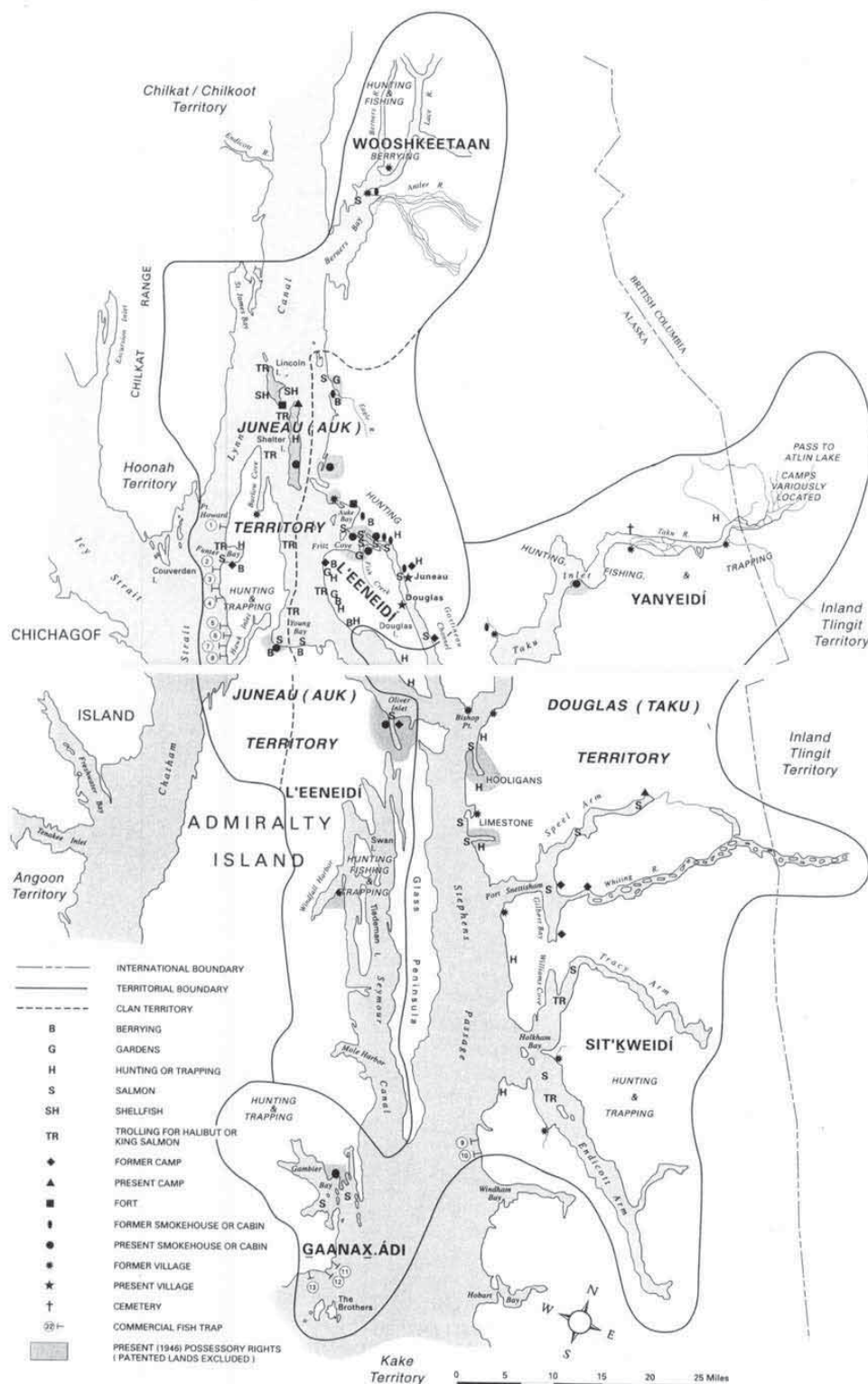
Wrangell is located on the north end of Wrangell Island on Zimovia Strait, and near the mouth of the Stikine River, which reaches into the Canadian Interior (**Map 1**). According to Betts et al. (1999d), the town dates from the construction of the Russian-American trading post in 1836. Two large villages of Wrangell existed at the locations of present-day Wrangell and Deserted Village located on Zimovia Strait (**Map 8**) (Goldschmidt and Haas 1998:73). Wrangell territory extended along the mainland approximately to Cape Fanshaw, across to Kupreanof Island, extending to just south of Etolin Island, areas not in Districts 11 or 15. Descended from the Stikine clans, a riverine people with villages and camps that extended 160 miles up the Stikine River, they controlled the trade network that developed around this drainage. After the Cassiar gold rush in the 1860s permanent settlers began to arrive at Wrangell to fish and log. Both industries continue to dominate the local economy.

Eight Factors for Determining Customary and Traditional Uses

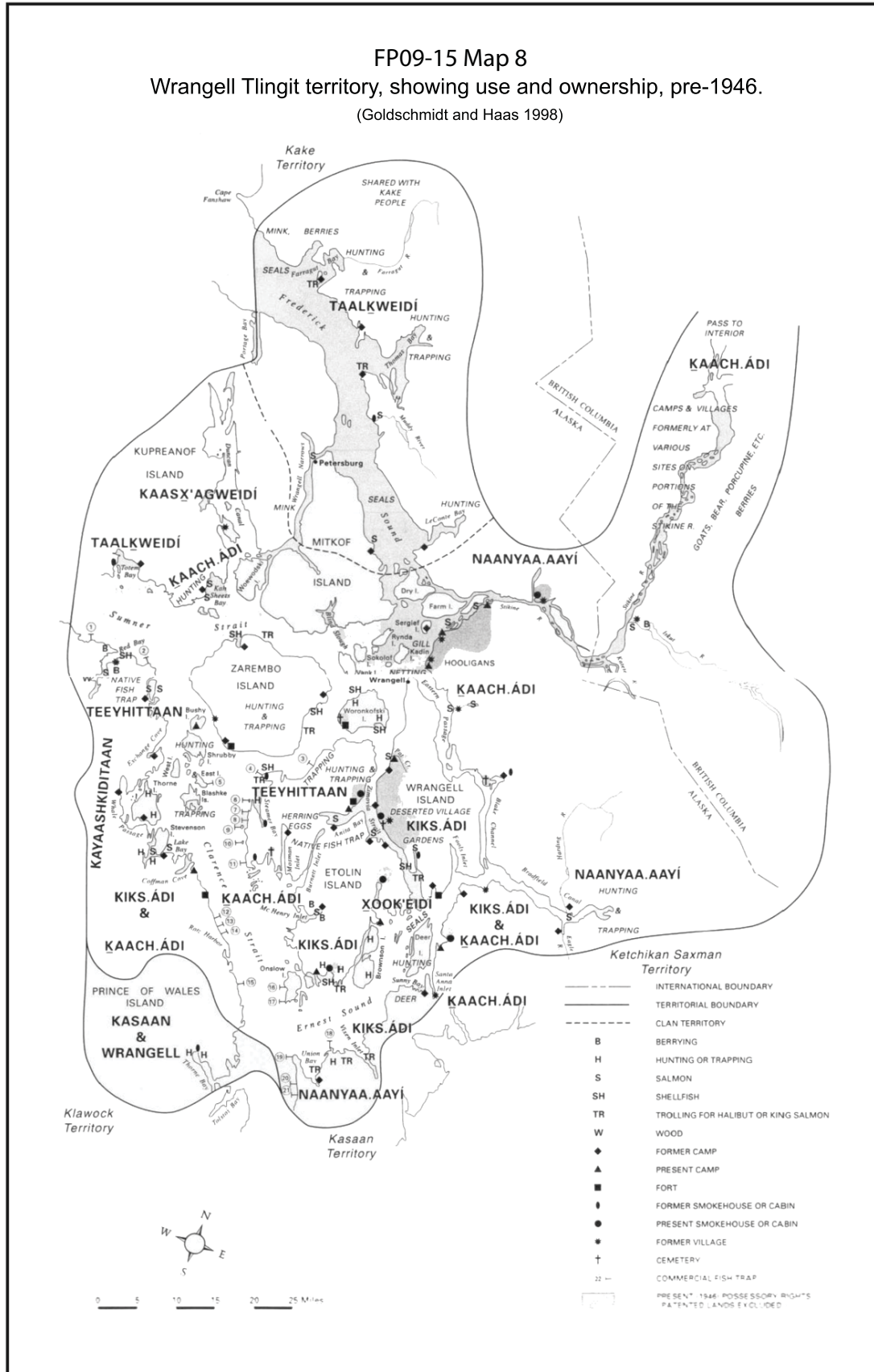
A community or area's customary and traditional use is generally exemplified through the following eight factors: (1) a long-term, consistent pattern of use, excluding interruptions beyond the control of the community or area; (2) pattern of use recurring in specific seasons for many years; (3) a pattern of

FP09-15 Map 7

Juneau-Douglas Tlingit territory, showing use and ownership, pre-1946.
(Goldschmidt and Haas 1998)



FP09-15 Map 8
Wrangell Tlingit territory, showing use and ownership, pre-1946.
(Goldschmidt and Haas 1998)



use consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, conditioned by local characteristics; (4) the consistent harvest and use of fish or wildlife as related to past methods and means of taking: near, or reasonably accessible from the community or area; (5) a means of handling, preparing, preserving, and storing fish or wildlife which has been traditionally used by past generations, including consideration of alteration of past practices due to recent technological advances, where appropriate; (6) a pattern of use which includes the handing down of knowledge of fishing and hunting skills, values, and lore from generation to generation; (7) a pattern of use in which the harvest is shared or distributed within a definable community of persons; and (8) a pattern of use which relates to reliance upon a wide diversity of fish and wildlife resources of the area and which provides substantial cultural, economic, social, and nutritional elements to the community or area.

The Federal Subsistence Board makes customary and traditional use determinations based on a holistic application of these eight factors (50 CFR 100.16(b) and 36 CFR 242.16(b)). In addition, the Board takes into consideration the reports and recommendations of any appropriate Regional Advisory Council regarding customary and traditional use of subsistence resources (50 CFR Part 100.16(b) and 36 CFR 242.16(b)). The Board makes customary and traditional use determinations for the sole purpose of recognizing the pool of users who meet the eight factors. The Board does not use such determinations for resource management or restricting harvest. If a conservation concern exists for a particular population, the Board addresses that concern through the imposition of harvest limitations or seasonal restrictions rather than by limiting the customary and traditional use finding.

Application of the eight factors indicates that residents of rural communities in Southeast Alaska have customarily and traditionally harvested a variety of fish and wildlife throughout the Southeast Alaska region and beyond. Some of these harvests occur during travel of substantial distances by boat, airplane, and foot.

Long-Term, Consistent Pattern of Use

Salmon, trout, char, smelt, and eulachon have been seasonally harvested and used by Tlingit communities in Southeast Alaska since well before historic contact to the present.⁴ Non-Natives throughout the region have also established long-term patterns of harvest and use of these fish in the streams, lakes, and marine waters where they are found. Variation from traditional patterns stem from, at least: (1) regulatory restrictions on eligibility, seasons, daily and annual harvest limits, gear types, and bait; (2) increased competition from out-of-state and nonrural residents; (3) variations in resource availability for reasons, including changes in abundance related to habitat change, over harvesting, and commercial harvesting; and (4) changes in available technology. Where not restricted, rural residents of the region have adopted enhanced harvest technologies, such as outboard boat motors and mechanical rod and reel gear, in addition to traditional techniques such as the use of nets, gaffs, and spears. Many patterns of use, including uses of resources obtained through gifting and exchange, remain the same throughout the region when access to those resources has not been restricted. Other patterns of use include various kinds of processing and preservation of fish for household consumption and customary trade, involving the gifting and sharing of fish, fresh and processed, with individuals and groups of Natives and non-Natives. Tlingit are dependent on wild resources, and their harvest and use have continued into the modern era. The harvest and use of wild fish is a way of practicing and teaching young people important cultural values and customary rules, such as harvesting only what is needed and not wasting (Newton and Moss 2005:2).

⁴ Cf. Betts 1994; De Laguna 1972, 1990; Emmons and De Laguna 1991; George and Bosworth 1988; Goldschmidt and Haas 1998 (original 1946); Kookesh 2004; Langdon 2006; Mills 1982; Mills et al. 1983; Mobley and McCallum 2001; Moss et al. 1990; Newton and Moss 2005; Niblack 1890; Paige et al. 2007; Price 1990; Ratner and Dizard 2006; Ratner et al. 2006; Smythe 1988; Stewert 1977; Turek 2005; Turek et al. 2006; and Thornton et al. 1990.

The communities have consistently harvested wild fish for home use. Community-based studies by ADF&G have documented the harvest and use of these resources, as presented in **Tables 2, 3, and 4**. The information in these tables exists in the ADF&G's Community Subsistence Information System (CSIS) (ADF&G 2007). These tables indicate the estimated harvests, if harvests during the study year were reported, of chum, coho, Chinook, pink, and sockeye salmon, as well as nonsalmon species, such as eulachon, Dolly Varden, cutthroat trout, rainbow trout, and steelhead. The data present a one-year snap shot. Harvest patterns for fish species vary annually due to a number of factors, such as weather conditions and the availability of these and other species.

Seasons of Use

Community studies, survey research, and permit information indicate that peak harvests of fish tend to occur during the peak of spawning runs. This is especially true for anadromous species such as salmon. However, some species are stream resident and taken year-round, or at specific times of year. This varies by locality somewhat because of the availability of other resources, the timing of the harvest in conjunction with other activities, and local custom. Steelhead are generally harvested in the spring (mid-March to mid-June), though some communities reported harvest of steelhead over a much longer time period (ADF&G 1989, 1991). Data collected in previous research is somewhat inconsistent in reporting harvest seasons for specific species, but it is clear that many communities have a long history of harvesting Chinook salmon year-round. Chum, coho, pink, and sockeye salmon are harvested in slightly staggered and overlapping spring and summer seasons. Some areas are used for longer harvest periods, with considerable variation in effort within those longer periods. Traditionally, whole families moved to their fish streams where intense harvesting and processing of salmon, meat, other fish, and berries took place (Newton and Moss 2005:36). Fish were dried in September and October (Goldschmidt and Haas 1998:114). This practice is continued by some, while many choose to harvest fish, particularly salmon, on day or over-night trips.

The seasonal patterns of use of smelt and eulachon are not documented in the same manner as salmon, trout, and char. However, it is clear from ethnographic sources and technical papers (Cf. Betts 1994) that harvest and use of eulachon was, and continues to be, an integral part of the subsistence round of the Tlingit living in communities in proximity to the principal contemporary eulachon runs in the Southeast Alaska region.

Methods and Means

Before European contact and in historic times, technologies used in harvesting finfish included, at least, weirs, spears, traps, gaff hooks, set hooks, trolling hooks, and throat gorges (Newton and Moss 1993, Stewart 1977). Later gear included gill nets, seine nets, long line, and rod and reel gear. All of these were efficient methods of harvest. Current subsistence regulations allow retention of fish caught incidental to the catch of fish for which permits are required, which fits with traditional values of using all of the resources harvested, including incidental catches.

Areas of Use

People in Southeast Alaska took fish from bays and streams that they either traditionally owned or had permission to use; this practice continues today. Traditional clans owned specific streams and clan leaders controlled access and use of the resources there. Infringement on streams was a serious offense and could result in retribution. These clan-owned areas are documented in Goldschmidt and Haas' report *Haa Aani, Our Land* (1998) and other sources. Not all streams traditionally used were adjacent to villages, and people sometimes traveled long distances to get fish. Some harvested fish for food along the way

Table 4. The estimated harvest and use of wild resource for home use, by resource category and community, most recent harvest surveys (ADF&G 2007, Paige 2002).

Resource Category	Percentage of Households Using	Harvest Level in Pounds Usable Weight		Percentage of Total Wild Resource Harvest
		Pounds Per Household	Pounds Per Person	
Skagway 1987				
All Resources	95.8%	137.5	48.1	100%
Fish	93.7%	94.8	33.2	68.9%
Salmon	72.8%	50.5	17.7	36.7%
Non-Salmon Fish	80.7%	44.3	15.5	32.2%
Land Mammals	36.3%	10.4	3.6	7.6%
Marine Mammals	0.5%	0	0	0%
Birds and Eggs	18.6%	1.0	0.4	0.7%
Marine Invertebrates	76.0%	25.6	9.0	18.6%
Vegetation	46.2%	5.7	2.0	4.1%
Klukwan 1996				
All Resources	100%	1,881.8	608.3	100%
Fish	100%	1,605.8	518.6	85.3%
Salmon	100%	825.4	266.5	43.9%
Non-Salmon Fish	100%	780.4	252.0	41.5%
Land Mammals	90.3%	85.2	27.5	4.5%
Marine Mammals	71.0%	8.1	2.6	0.4%
Birds and Eggs	35.5%	2.8	0.9	0.1%
Marine Invertebrates	77.4%	43.3	14.0	2.3%
Vegetation	100%	136.6	44.7	7.3%
Haines 1996				
All Resources	97.8%	534.8	195.8	100%
Fish	95.7%	380.2	139.2	71.1%
Salmon	89.2%	159.4	58.4	29.8%
Non-Salmon Fish	86.0%	220.8	80.8	41.3%
Land Mammals	78.5%	79.7	29.2	14.9%
Marine Mammals	9.7%	2.7	1.0	0.5%
Birds and Eggs	32.3%	3.8	1.4	0.7%
Marine Invertebrates	77.4%	28.7	10.5	5.4%
Vegetation	87.1%	39.7	14.5	7.4%
Tenakee Springs 1987				
All Resources	100%	701.9	329.9	100%
Fish	96.8%	279.2	131.2	39.8%
Salmon	77.4%	105.0	49.3	15.0%
Non-Salmon Fish	96.8%	174.2	81.9	24.8%
Land Mammals	87.1%	288.2	135.5	41.1%
Marine Mammals	9.7%	16.2	7.6	2.3%
Birds and Eggs	32.2%	4.4	2.1	0.6%
Marine Invertebrates	93.5%	91.4	42.9	13.0%
Vegetation	87.1%	22.5	10.6	3.2%
(Continued)				

Table 4. (Continued).

Resource Category	Percentage of Households Using	Harvest Level in Pounds Usable Weight		Percentage of Total Wild Resource Harvest
		Pounds Per Household	Pounds Per Person	
Petersburg 2000				
All Resources	92.8%	444.0	161.4	100%
Fish	88.0%	281.9	102.4	64.1%
Salmon	75.2%	165.6	60.2	37.6%
Non-Salmon Fish	76.8%	116.2	42.2	26.4%
Land Mammals	52.8%	47.5	17.3	10.8%
Marine Mammals	0%	0	0	0%
Birds and Eggs	17.6%	1.7	0.6	0.4%
Marine Invertebrates	80.0%	102.1	37.1	23.2%
Vegetation	59.2%	10.9	4.0	2.5%
Wrangell 2000				
All Resources	93.9%	439.1	167.4	100%
Fish	86.7%	156.2	59.6	35.6%
Salmon	78.6%	67.0	25.5	15.3%
Non-Salmon Fish	74.5%	89.3	34.0	20.3%
Land Mammals	60.2%	102.0	38.9	23.2%
Marine Mammals	0%	0	0	0%
Birds and Eggs	15.3%	3.6	1.4	0.8%
Marine Invertebrates	80.6%	156.2	59.6	35.6%
Vegetation	64.3%	21.1	8.0	4.8%

while engaged in hunting or trapping. As people in Southeast Alaska began participating in commercial fisheries in the nineteenth century, subsistence fishing often took place immediately before, during, or after commercial openings. This pattern of harvest in streams closely accessible as well as farther away in conjunction with commercial fishing persists in contemporary life (cf. Paige et al. 2007).

All five salmon species are found in the region, but their spawning streams are not distributed uniformly. For instance, some residents travel 20 or 30 miles, or more, to harvest sockeye salmon at stream sites. Similarly, Chinook salmon spawning is limited to a few mainland rivers and one stream on Admiralty Island (ADF&G 1989). Local knowledge of fish behavior and life cycles and the ability to use specialized harvest methods are important for successful harvest.

The State's Subsistence/Personal Use Salmon Permit system indicates that Districts 11 and 15 are used by residents of Southeast Alaska communities to harvest salmon (Fall, Brown, Caylor, Coffing et al. 2003; Fall, Brown, Caylor, Georgette, et al. 2003). However, community-level data exist for only two years, 2001/02 and 2002/03, when residents of Skagway, Klukwan, Haines, Gustavus, Hoonah, Tenakee Spring, Angoon, Sitka, and Petersburg reported harvesting salmon in Districts 11 and 15 on State salmon permits.

Limited data are available from the Statewide Sport Fish Harvest Survey, a mail out survey conducted by ADF&G. The survey was designed to provide statewide and regional estimates of effort and harvest of fish by sport fish license holders using sport fish gear under sport fish regulations. The Statewide Sport Fish Harvest Survey is not designed to provide detailed harvest and effort estimates for individual

streams. From 1996 to 2006 there were 107 responses to the statewide harvest survey from rural residents of Southeast Alaska who reported sport fishing in Districts 11 and 15. Of these 107 entries, 32 fished in fresh waters. A further examination of which streams were fished found that 24 of these entries were for waters crossed by the Juneau road system, including fishers from the communities of Skagway, Sitka, Wrangell, Pelican, Haines, and Gustavus. (A single survey respondent may have provided more than one of the 107 entries in survey results.) Although these harvests were reported under the Statewide Sport Fish Harvest Survey, the intent and purpose of these harvests is unknown. It is possible that the fishers were harvesting for subsistence under sport fishing regulations in the absence of subsistence regulations.

Most of the freshwater sport fishing effort within Districts 11 and 15 by Southeast Alaska residents, 1996–2006, was exerted by the residents of Juneau (identified as survey responders who reside within zip codes 99801, 99802, 99803, 99812, 99824, 99850). Roughly 5,000 entries of anglers fishing in Districts 11 and 15 were from Juneau residents fishing in salt water and 1,200 entries were from Juneau residents fishing in freshwater (Pappas 2007, pers. comm.)

People continue to harvest and use trout as a subsistence resource, even though in some locations it may only be harvested under sport regulations. The ADF&G studies indicate considerable variation in percentages of households using char and trout. In recent surveys the portion ranged from 17% to 61% of households using char and trout, and from 15% to 58% of households harvesting char and trout, in six communities included in this analysis (**Table 3**). Considerable variation also exists among communities in the amount of char and trout harvested (**Table 3**).

Eulachon runs occur in specific areas and are targeted for their oil for use and trade by those communities closest to those areas, including, from north to south: Situk River and Dry Bay near Yakutat; Chilkat River in District 15; Taku Harbor in District 11; Excursion Inlet near Gustavus; Stikine River near Wrangell; Chickamin River and Unuk River near Ketchikan; and others (Goldschmidt and Haas 1998). Eulachon oil is rendered and traded.

Specific use areas for each community with fish harvests in Districts 11 and 15, indicated in subsistence use studies, are discussed in the following sections (e.g., Betts et al. 1999a; Betts, Victor et al. 1992; Paige 2002; and Smythe 1988).

Skagway

Skagway residents generally prefer to harvest fish close to the community, but there are harvests that occur farther from the community. The 1987 and 1988 Tongass Resource Use Cooperative Survey (TRUCS) and subsequent reviews of mapped data by community residents in 1992 and 1993 (1991 in Petersburg and Haines; 1987 in Tenakee Springs) indicated that residents of Skagway identified salmon fishing areas (**Map 2**) within Districts 11 and 15 in Lynn Canal from Seduction Point to Sullivan Island, including waters around the Chilkat Islands as well as the waters around Lincoln, Shelter, and Douglas Islands near Juneau (Paige 2002:296). Dolly Varden and eulachon contributed to the fish harvested for home use in Skagway in 1987. The 1987 household harvest and use survey for Skagway did not collect information on cutthroat, rainbow trout, or steelhead. Residents identified nonsalmon harvest areas (**Map 3**) including waters of Lynn Canal at Sullivan and Chilkat Islands, and off the mouth of Endicott River in District 15 (Paige 2002:299).

Klukwan

The Chilkat River, from its mouth to headwaters, and its tributaries (in District 15) constituted the main salmon harvest area for Klukwan residents in 1987, however, salmon were also harvested in other areas

of District 15: 1) Chilkat Inlet from Seduction Point to the mouth of the Chilkat River; 2) at Klukwan; 3) several locations upriver from Klukwan; 4) portions of Big Boulder Creek and the Kelsall River; 5) Tsirku River outlet; 6) the head of Lutak Inlet, the Chilkoot River, and Chilkoot Lake; 7) Chilkat Lake; 8) the Klehini River for Chinook, coho, and chum salmon; 9) a larger extent of Lutak Inlet, as well as Lynn Canal as far south as Bridget Cove (for rod and reel trolling); and 10) William Henry Cove (for rod and reel trolling). The heaviest levels of use are adjacent to the community, at the mouth of the Tsirku River, the Chilkat River, the Chilkat Inlet, Lynn Canal, Pyramid Harbor, and Letnikof Cove (Betts et al. 1999a).

The nonsalmon harvest area mapping had some inadequacies, only included one or two household's use areas, and therefore, did not capture many areas used by the community (**Map 3**). Review of the map shows that Klukwan harvested nonsalmon fish within District 15 in the Chilkat River at four, six, seven, and nine mile for hooligan, trout, and char; the Tsirku River outlet for trout and char; and the Chilkat Lake for trout and char (Betts et al. 1999a).

Haines

The Chilkat territory (**Map 5**) includes Federal public lands and waters within District 15 as far south as Berners Bay. This area has been used by residents of Haines to harvest wild resources (Goldschmidt and Haas 1998:99). The Chilkat Islands located to the northwest of Sullivan Island are located within the boundaries of District 15 and were used for trolling for nonsalmon fish (Goldschmidt and Haas 1998:34–35).

During update and review sessions with local residents in 1992 and 1993, following the initial TRUCS study, Haines respondents reported using areas (**Map 2**) in District 15 including: 1) Berners Bay for coho, by rod and reel; 2) Chilkat Lake for sockeye and coho; 3) the Klehini River up to Big Boulder Creek, and tributaries of the Klehini River including Herman Creek for chum salmon; 4) Taiya Inlet; and 5) St. James Bay for chum, pink, and coho, by rod and reel (Paige 2002:82).

Tenakee Springs

Tenakee Springs households identified areas used for salmon fishing on maps as part of the ADF&G's Subsistence Division 1984 household harvest survey project, but none showed use in Districts 11 and 15 (**Map 2**) (Paige 2002:306). However, according to 1991 Subsistence/Personal Use Salmon Permits, Tenakee Springs' sockeye salmon harvest area included the Taku River area in District 11 and pink and chum salmon were harvested in streams within the Juneau Management Area (Betts et al. 1992:29). Nonsalmon fish harvest areas have not been mapped by ADF&G (Betts et al. 1992:29; Paige 2002:307–308).

Petersburg

Only a small portion of the Petersburg use area for fish is in District 11 (**Map 3**). A baseline harvest survey conducted in 1987 indicated that fish other than salmon were harvested by Petersburg residents in Seymour Canal in District 11, east of Admiralty Island off of Stephens Passage. No mention was made regarding what kinds of fish were harvested (Smythe 1988:87).

Wrangell

Wrangell households identified areas used for salmon fishing on maps as part of the ADF&G Subsistence Division's 1987 household harvest survey project (**Map 2**). Wrangell residents primarily harvested fish in areas closer to the community, but they harvested salmon in Stephen's Passage near Auke Bay in District

11 (Betts et al. 1992:28). Nonsalmon fish were harvested in Taku Harbor in District 11 and St. James Bay, Sullivan and Chilkat Island areas, Chilkat Inlet, and Lutak Inlet in Lynn Canal in District 15 (**Map 3**) (Betts et al. 1992:31).

Handling, Preparing, Preserving, and Storing

Fish are handled, prepared, preserved, and stored using methods common throughout Southeast Alaska. These include drying, smoking, canning, salting, pickling, freezing, and sometimes fermenting. Occasionally subsistence products may be preserved in seal or eulachon oil. Traditional means of taking care of fish are practiced extensively today. For instance, salmon are cut and scored for efficient drying much as they were in the past. The fish are smoked in wooden smokehouses or metal smokers, air dried, canned, frozen, refrigerated, and cooked freshly caught. Although the use of fermented salmon heads and eggs is not as common as it once was, salmon heads and roe are still aged and fermented in some communities, often by traditional methods of burying the eggs or heads in containers on the beach below high tide (ADF&G 1989).

Late runs of salmon were frozen historically, but depended on cold weather instead of electric freezers. People throughout Southeast Alaska still harvest some of their fish after they have spawned because their low fat content makes them the best for dry fish. Tlingit people of the communities in Districts 11 and 15 continue to fish for eulachon on the Chilkat River and render the fish into oil in traditional ways (ADF&G 1989).

Handing Down of Knowledge of Fishing

Knowledge of fishing skills, values, and lore are transmitted from generation to generation in ways common throughout Southeast Alaska. Among Native residents, clan and family ties continue to provide important vehicles for transmission of knowledge. The learning of skills associated with harvesting and preparing fish generally derives from a process of observation and participation with elder relatives or community residents, as well as listening to stories describing fish lore and skills. Trout, in particular, are used to teach young children and grandchildren how to fish. Small children lack the coordination to use lures and flies (FSB 2000a:9). Traditionally the new generation learns subsistence methods from key matrilineal kinsmen. In traditional Tlingit culture, young boys learn virtually all lore and economic skills from their mother's brothers (ADF&G 1989). In District 11 and 15, amongst the Tlingit today, fishing skills and locations continue to be learned from uncles as well as other relatives and elders. Techniques and harvesting equipment are still generally shared among households (ADF&G 1989). Many rural communities in Southeast Alaska are characterized by large extended families with long history and experience in their local areas. Residents of rural communities in Southeast Alaska possess considerable depth of knowledge regarding resource skills, values, and cultural connections to salmon, trout, char, smelt and eulachon. Important learning about subsistence takes place at potlatches and other traditional celebrations where subsistence foods figure importantly. Subsistence resources may be harvested, as needed, during travel to and from these occasions.

Sharing

Giving, receiving, trading, and selling fish is ubiquitous among the Native peoples of Southeast Alaska. This tradition of distribution and exchange continues as part of the great giveaways associated with elaborate feasts and ceremonies such as the potlatch, and between individuals and families at the everyday level. Sharing occurs throughout all of the Southeast Alaska communities, and fish is one of the main elements. This pattern continues, as is shown in household survey data (**Table 3**). These sharing practices are a major element of the cultures of these communities. Communities often have primary providers for

particular resources, the designated hunters or fishers for sometimes large groups of relatives or socially important people. Other sharing, whether in gifting or exchange, is accomplished by individuals with immediate family, extended relatives, or specific trading partners in the same community or from different communities.

Reliance Upon a Wide Diversity of Fish and Wildlife Resources

Salmon were, and continue to be, the mainstay of the economy and the most important group of subsistence species for Southeast Alaska communities. Salmon fishing has been augmented by, and is complementary to, the seasonal round of collecting other kinds of fish, hunting for terrestrial and marine mammals, collecting intertidal resources, and harvesting plants from beaches, forests, and elsewhere. The harvest and use of cutthroat trout, rainbow/steelhead trout, and Dolly Varden is widespread across the region and similarly fits in the seasonal round of subsistence activities (ADF&G 1989; ADF&G 1991). Subsistence surveys indicate that communities whose residents have harvested subsistence fish in Districts 11 and 15 tend to harvest significant quantities of fish and wildlife. Virtually all households use some subsistence resources, and almost all households harvest some subsistence resources for their own use. Overall harvest levels vary across the resources utilized. **Table 4** shows estimated per capita subsistence harvest levels by community, based on the most recent household surveys conducted between 1987 and 2000. These studies, some of which were part of the Tongass Resource Use Cooperative Study, show significant harvests of salmon and other finfish for the communities harvesting fish in Districts 11 and 15.

Effects of the Proposal

If this proposal is adopted there could be effects on subsistence users because a “no Federal subsistence priority” determination specifically for the Juneau area would not provide rural residents the ability to harvest fish from Federal public waters along the road-connected area of Juneau under Federal regulations. Data presented in the analysis show that there are Federally qualified rural residents harvesting or attempting to harvest fish from the Juneau area in Districts 11 and 15. Thus, if this proposal is adopted, rural residents would no longer be eligible to harvest fish in fresh waters of the Juneau road system area if they choose to harvest under Federal subsistence regulations.

If this proposal is adopted it would mean making a specific customary and traditional use determination for a portion of Districts 11 and 15—the Juneau road system. Residents of the Juneau area already are ineligible to harvest fish under Federal subsistence regulations.

If this proposal is not adopted, effects on fish stocks and populations are not anticipated because no change in subsistence harvests is anticipated. Permits are required for Federal subsistence salmon and trout harvests in Districts 11 and 15, including the Juneau road system. The permits are used to monitor harvests in order to effectively address any conservation concerns.

OSM CONCLUSION

Oppose Proposal FP09-15.

Justification

Proposal FP09-15 requests a “no Federal subsistence priority” customary and traditional use determination for the Juneau road system including all waters crossed by or adjacent to roads connected

to the City and Borough of Juneau road system, situated in Districts 11 and 15 of the Southeastern Alaska Area.

Districts are the typical geographic descriptor for which the Board has made customary and traditional use determinations for fish in the Southeastern Alaska Area. The Juneau road system area is estimated to be less than 10% of the area of these fishing Districts. The location-specific customary and traditional use determinations for fish in Southeast Alaska were adopted from State regulations.

Because the proposal seeks to narrow an existing customary and traditional use determination, a full analysis and re-evaluation of the existing determination was conducted. The eight factors provide a general framework for examining a pattern of use of a resource by rural residents of Alaska; such an examination does not require a factor-by-factor analysis. Based on an integrated discussion of the factors, residents of rural Southeast Alaska demonstrate a customary and traditional pattern of use for Dolly Varden, trout, smelt, and eulachon throughout Districts 11 and 15. Since no specific customary and traditional use determination has been made for all other fish, all Federally qualified rural residents in Alaska are eligible to harvest all other fish in the Federal public waters of Districts 11 and 15.

Residents of the Juneau road-connected area live in an area determined to be nonrural by the Federal Subsistence Board, and therefore are not Federally qualified subsistence users. Although Juneau residents do not have eligibility under ANILCA Title VIII to fish under Federal subsistence regulations due to their nonrural status, Federally qualified rural residents do have eligibility. Data presented in the analysis show that there is customary and traditional use of fish in Districts 11 and 15, which includes the Juneau road system, by Federally qualified rural residents, including users from the nearby communities of Klukwan, Haines, Skagway, Tenakee Springs, Petersburg, and Wrangell. If Federal subsistence harvests of fish were to increase on the Juneau road system, permit reporting will capture that change. Currently there are no conservation concerns. If conservation concerns arise, they can be dealt with through harvest limits or seasonal restrictions. Customary and traditional use determinations merely identify the pool of eligible users.

Review of Council and Board transcripts, regulatory proposals, and Council recommendations, indicate that the Council consciously included the Federal public waters of the Juneau road system area, among other remainder areas, open to subsistence for Federally qualified residents of rural Southeast Alaska for Dolly Varden, trout, smelt and eulachon; it was not an incidental inclusion. ANILCA Title VIII, Section 804, provides that “the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes.” Information in the analysis addressing the “eight factors” indicates that a customary and traditional pattern of use of fish exists on the Juneau road system by residents of rural Southeast Alaska.

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INTERAGENCY STAFF COMMITTEE COMMENTS
FP09-15

The Interagency Staff Committee found the staff analysis to be a complete and accurate evaluation of the proposal, and the recommendation of the Regional Advisory Council to be supported by substantial evidence, consistent with recognized principles of conservation and appropriately allows for the continuation of subsistence uses. FP09-15 seeks a finding of “no subsistence priority” for fish along the Juneau road system because of concerns over conservation should the existing customary and traditional use finding be retained. However, customary and traditional use determinations are for the sole purpose of recognizing the pool of users who demonstrate a customary and traditional pattern of use and not for resource management or restriction of harvest. Conservation concerns are best addressed through the imposition of harvest limitations or seasonal restrictions rather than by limiting the customary and traditional use finding.

ADF&G Comments FP09-15
December 2, 2008, Page 1 of 6

Alaska Department of Fish and Game
Comments to the Federal Subsistence Board

FP09-15 Juneau Road System – Customary and Traditional Use Determination

Introduction: Proposal FP09-15 requests that the Federal Subsistence Board (Federal Board) demonstrate customary and traditional findings for individual communities for fish stocks within Fisheries Districts 11 and 15 on waters crossed by roads within the current boundaries of the City and Borough of Juneau, consistent with the course of action suggested by a member of the Federal Board on January 13, 2006. The proponent requests the eight regulatory factors concerning customary and traditional use of each specific fish stock by each community for each stream be evaluated and reviewed by the Federal Board. The Juneau non-rural area has no specific customary and traditional use determination and currently falls under the federal regulation category “Remainder of the Southeastern Alaska Area.” Under this designation, the Juneau road system area is open to the federal subsistence harvest of Dolly Varden, trout, smelt, and eulachon by all rural residents of the Southeast Alaska and Yakutat areas, and to subsistence harvest of salmon by all rural residents of Alaska. These overly broad designations which provide a federal subsistence preference for the far north rural residents of Barrow to fish for salmon on streams in a southeastern urban community over 1000 air miles from home, and which provide a preference to rural residents of the southern southeast community of Hydaburg, in an urban northern southeast community over 225 air miles from home, are unnecessary, unsupportable, and contrary to both common sense and the law as recently interpreted by the Ninth Circuit.

Background: The waters that would be subject to this determination constitute a very small portion (less than 10%) of the freshwater fisheries in Districts 11 and 15 of Southeast Alaska. They are very important to the residents of the Juneau area but are not important to rural residents and are rarely used for any purpose by rural residents of any community. In acting on previous proposals, the Federal Board suggested it would be appropriate to adopt a determination of “no Federal subsistence priority.”¹ But later, in December 2007, the Federal Board rejected the State’s proposal (FP08-04) requesting such a determination, without evaluating the eight regulatory factors concerning customary and traditional use of each fish stock by each community. As early as 2000, the Interagency Staff Committee informed the Federal Board that there was a lack of substantial evidence to show that communities in the region have customarily and traditionally harvested and used the stocks of rainbow trout, cutthroat trout, and Dolly Varden along the Juneau road system. The current federal staff analyses does not provide substantial evidence to support a customary and traditional use finding for any specific fish stocks in these waterways by any residents from rural communities living outside the Juneau area. There is nothing in the staff analysis that would support an argument that the taking of any fish stock on the Juneau road system constitutes “a long established, consistent pattern of use, incorporating beliefs and customs which have been transmitted from generation to generation” for any rural community, or that the taking of any fish stock on the Juneau road system “plays an important role in the economy” for any rural community. Because there is no substantial evidence for these arguments, it is clear that any use of Juneau road system fish stocks falls

¹ Federal Board’s analysis of FP06-31 in January 2006 and threshold analysis of the Federal Board’s denial of the State’s Request for Reconsideration FRFR 06-05, dated August 22, 2006.

ADF&G Comments FP09-15
December 2, 2008, Page 2 of 6

outside the regulatory definition of customary and traditional use, *see* 50 C.F.R. §100.4. No evidence is presented in the federal staff analysis that indicates a subsistence opportunity along the Juneau road system would ever even be used by any community in Southeast Alaska.

Application of the September 23, 2008, Ninth Circuit Court opinion in *State of Alaska v. Federal Subsistence Board*, 544 F.3d 1089, makes it clear that an adequate record to support a C&T determination for the fisheries on the Juneau road system has not been developed and cannot be established. As the Court held in its decision, Federal Board C&T determinations must be supported by substantial evidence of a specific rural community or area's demonstrated customary and traditional taking of a specific wildlife population or specific fish stock, not general species, within specific geographic locations. *Alaska v. Federal Subsistence Board*, at 1094-99. The Board's determination must have a "substantial basis in fact." *Id.* at 1094. The Court held: "Under 50 C.F.R. §100.16, C & T determinations should 'identify the specific community's or area's use of specific fish stocks and wildlife populations,'" "and not Chistochina's use of moose in general." *Id.* at 1096. The Court added that the Federal Board's "regulations clearly tie C & T determinations to the specific locations in which wildlife populations have been taken" and "each C & T **determination** must be tied to a specific community or area and a specific wildlife population." *Id.* at 1097 (emphasis in original). The Court further emphasized: "Specific communities and areas and specific fish stocks and wildlife populations are, by definition, limited to specific geographic areas" and "a C & T determination is a determination that a community or area has taken a species for subsistence use **within a specific area.**" *Id.* at 1097-98 (emphasis in original).

The Ninth Circuit pointed out that six of the Federal Board's eight C&T factors refer to a "pattern of use" of "specific fish stocks or wildlife populations" and a seventh factor also imposes explicit geographic limitations by directing the Board to consider whether there is "consistent harvest and use of fish or wildlife . . . near, or reasonably accessible from the community or area." *Id.* at 1098; *see also* 50 C.F.R. 100.16(b). Available information cannot support a determination that any rural community has a "pattern of use" of any fish stock on the Juneau road system. There has been no "consistent harvest" of fish stocks on the Juneau road system by any rural community, and the Juneau road system fish stocks are not "near or reasonably accessible" to any rural community. Federal staff reports fail to provide any substantial evidence to support arguments that use of the isolated Juneau road system stocks can satisfy the Federal Board's regulatory definition of customary and traditional use, *see* 50 C.F.R. 100.4, and likewise fail to provide any substantial evidence to support an argument that any community or area "generally exhibits" the Board's regulatory factors for making a positive C&T determination for any specific stock of fish on the Juneau road system. *See* 50 C.F.R. 100.16(b).

In *Alaska v. Federal Subsistence Board*, the Court upheld a C&T determination for Chistochina residents to take moose upon all federal lands within Game Management Unit 12 based on: (1) the assumption, which the Court thought had support in the record, that the populations of moose which had been historically taken by Chistochina residents within a 2500 square mile area were the same populations of moose on other federal lands within the Unit; and that (2) the alternate rationale, somewhat dependent on the first, that the Federal Board was justified by a "benefit to management" in designating a C&T area for Chistochina to take those moose within all 5900 square miles of federal lands within the Board's pre-determined areas A, B and C, rather than

ADF&G Comments FP09-15
December 2, 2008, Page 3 of 6

being required to carve out a new area for Chistochina limited to just the 2500 square miles of that community's actual historic use. *Id.* at 1096-97, 1099-1100.

On the Juneau road system, the situation is far different from what the Ninth Circuit Court believed the situation to be for moose in GMU 12. First, the salmon and trout stocks found in individual streams on the Juneau road system represent distinct stocks. Evidence of take of the same general species of fish in other districts, or even in other portions of the same districts, cannot be used to establish historic taking of the specific stocks on the Juneau road system. The Federal Board has not developed a customary and traditional use determination specific to fresh waters of Districts 11 or 15. It is extremely unlikely that any rural community would be able to provide substantial evidence of the customary and traditional use factors for any fish stock on the Juneau road system.

Second, because there has been no historic customary and traditional taking of the specific fish stocks on the Juneau road system by any Southeast rural community, a perceived "benefit to management" cannot justify including these Juneau fresh waters within the rest of Districts 11 and 15. The Juneau stocks are different stocks of fish than those which any Southeast rural community has historically taken. Moreover, federal and state fisheries management both benefit by utilizing a separate regulatory framework for these easily accessed high use waters where fish stocks must be managed through much more conservative regulations than are required in other areas of the districts. Separating out this nonrural area having no demonstrated customary and traditional use of its fish stocks by Southeast rural communities also allows the Board to carry out its responsibilities of balancing the competing purposes of ANILCA and avoiding unnecessary restrictions on nonsubsistence users. Even if the Board were to conclude that there has been customary and traditional taking of other fish stocks by some rural communities within Southeast Alaska and were to mistakenly believe that it has discretion to lump the specific fish stocks of the Juneau road system together with those other fish stocks taken within Districts 11 and 15, there would be good reason for the Board to decline asserting that perceived discretion.

Impact on Subsistence Users: Although both Southeast Alaska general federal subsistence fishery permits and the Southeast Alaska spring steelhead permits allow fishing on the Juneau road system and require reporting of harvest by stream, no federal subsistence harvests by rural residents have been reported for the freshwaters of the road system within the City and Borough of Juneau boundaries. In fact, only two sport-caught fish were reported as having been caught by rural residents of Southeast Alaska on the Juneau road system by responders to the Statewide Sport Fish Harvest Survey from 2004 through 2006. There is no evidence of customary and traditional taking of specific fish stocks for subsistence use by any rural resident in freshwaters that cross the road system within the City and Borough of Juneau boundaries. Meaningful subsistence fishing priorities for rural residents exist in streams that are closer to their respective communities. Eligible rural residents would have to travel substantial distances by boat or airplane in order to fish on Juneau roads, and such harvest would not be cost effective. Based on the lack of documentation of any subsistence use, the Federal Board should exempt the fresh waters of the Juneau City and Borough road system area from region-wide regulations by making a negative customary and traditional finding for all communities for all fish stocks in

ADF&G Comments FP09-15
December 2, 2008, Page 4 of 6

freshwaters that cross the road system within the City and Borough of Juneau boundaries. This action would have no impact on federally qualified rural subsistence users.

Opportunity Provided by State: State regulations provide for a variety of sport fishing opportunities in freshwaters and adjacent shoreline areas, but these opportunities are more restricted than elsewhere in Southeast Alaska. Most people fish for subsistence and recreational use in marine waters. The Department's sport fisheries website for the Juneau road system lists only 15 freshwater streams and, although saltwater shoreline areas are also available for anglers to fish, fishing in saltwater for trout and Dolly Varden is more restricted and subject to lower bag limits than in other areas of Southeast Alaska. Nearly all freshwater sport fishing activity (roughly 80%) along the Juneau road system takes place in four primary streams (Cowee Creek, Montana Creek, Peterson Creek, and Fish Creek). Fish populations in these streams are relatively small. Given Juneau's relatively large human population and road access, the potential exists for over harvesting local fish resources if additional harvest opportunity is provided. Several small roadside streams are closed to sport fishing altogether, and others are closed to salmon or Dolly Varden fishing. Restrictive bag and possession limits are in effect for many species as well. Juneau roadside bag limits, possession limits, and size requirements differ in several respects from regional regulations. Bag and possession limits have been reduced for coho salmon, sockeye salmon, and Dolly Varden. In addition, cutthroat trout size limits are more conservative in the Juneau area than in other areas of Southeast Alaska. These restrictions on Dolly Varden and cutthroat trout are also effective in all salt water adjacent to the Juneau City and Borough road system to a line ¼ mile offshore.

Because Juneau is a non-rural area, residents of Juneau who historically used fish stocks in the area are ineligible to participate in the federal subsistence fishery and cannot qualify for a federal customary and traditional use determination. The existing federal subsistence regulations could lead to even more restrictions on non-federally qualified users (e.g., Juneau residents) in the non-rural area along the Juneau road system on both state and federal lands. These further restrictions -- which are unnecessary since there are no existing subsistence uses in need of continuation -- could potentially force Juneau residents to travel long distances to rural areas to participate in freshwater sport fisheries. They might also result in increased state subsistence and personal use participation in these areas. They could thus create increased competition and be detrimental to the satisfaction of subsistence needs in those rural areas. Further state restrictions along the Juneau road system would also impact opportunities for those who relocate from rural areas to Juneau and rely upon opportunity in the Juneau area to continue their fishing activities.

Conservation Issues: While conservation concerns are not a factor in the Federal Board's C&T analysis, they do provide a common sense rationale for separating the Juneau Road system and specific stocks in the area from other "remainder" areas of Southeast Alaska and for making sure that only communities with established customary and traditional use of the specific stocks in the area receive a federal subsistence priority on those stocks. The Department has continually expressed conservation issue concerns to the Federal Board about sustainability of highly accessible fisheries on the Juneau road system if these fisheries are subjected to any participation under liberal federal subsistence harvest regulations. This proposal specifically requests a Customary and Traditional determination for specific fish stocks in a specific area. Comments illustrating the Department's ongoing concerns and conservation issues were previously

ADF&G Comments FP09-15
December 2, 2008, Page 5 of 6

presented both in writing and orally to the Federal Board for proposals FP06-31, FP08-04, and the Department's Fisheries Request for Reconsideration 06-05, these prior comments are incorporated by reference. Additional concerns are published in the Department comments for FP09-04 contained in this Federal Board meeting book

Jurisdiction Issues: According to the Department's Fish Distribution Database, the majority of fish habitat and documented fish observations in these streams are not located within federal lands. Some streams have relatively inaccessible headwaters on federal land, but they flow through State, private, and other land ownership and are not within the Tongass Forest boundary prior to crossing Juneau roads to enter marine waters. Other streams along the Juneau road system flow entirely on non-federally owned land. The federal analysis in the September 2007 Southeast Regional Advisory Council Fisheries Meeting Materials book, page 84, incorrectly states:

Federal waters comprise all fresh waters draining into fishing District 11 and those fresh waters draining into fishing District 15 south of Chilkat Peninsula (near Haines) . . . all within exterior boundaries of the Tongass National Forest (Map 1). These waters include all streams crossed by roads connected to the City and Borough of Juneau road system.

We requested this statement be corrected before providing the 2008 analysis to the Regional Advisory Council, Federal Board, and subsistence users. We also requested that the federal maps be corrected to accurately portray the Tongass Forest boundary which specifically excludes a significant portion of the Juneau area. To date these corrections have not been made.

In order for rural residents to know where they can legally participate in federal subsistence fisheries, and to aid enforcement personnel in determining whether activities are legal, we request detailed land status maps showing areas and specific boundaries of waters claimed to be within federal subsistence jurisdiction and the basis for those claims. Maps provided by federal staff to date are not accurate enough to ensure federal subsistence users do not inadvertently fish from lands not claimed under federal jurisdiction. Significant portions of lands surrounding the Juneau road system are bordered by state or private lands, where there either is no federal jurisdiction or where persons cannot participate in federal subsistence fisheries while standing on non-federal lands. During the December 2007 Federal Board meeting, State of Alaska Wildlife Trooper testimony (Federal Board Transcripts December 11, 2007 pages 89-91) illustrated to the Federal Board the importance of users understanding and knowing jurisdiction and land status. This testimony explained that when an enforcement officer encounters an individual conducting an activity that is prohibited by State regulations and the individual is on State or private lands, including State-owned submerged lands, the person may be cited. A negative C&T determination for fish stocks on the Juneau road system will significantly decrease the likelihood that rural residents will be cited for violation of state law for subsistence fishing on non-federal lands along that road system.

Recommendation: Support. The current Staff Analysis provides no evidence of customary and traditional takings of any specific fish stock along the Juneau road system by any specific rural community. Based on the Board's regulatory definitions and factors, and on the September 23, 2008 Ninth Circuit Court opinion in *State of Alaska v. Federal Subsistence Board*, the current

ADF&G Comments FP09-15
December 2, 2008, Page 6 of 6

“remainder area” C&T determination including Juneau road system fish stocks is overly broad and unsupportable. The Federal Board should correct this determination by specifically evaluating the evidence of any takings of specific fish stocks from the Juneau road system streams by specific rural communities. If it does so, the Board will find there is no substantial evidence to support a subsistence C&T priority for federally qualified residents of any rural community in Southeast Alaska or any rural community in other areas of Alaska to fish under federal regulations in these limited freshwater streams for any of these small, sensitive, and tightly restricted Juneau road system stocks.

Comments FP09-15
December 2, 2008, Page 1 of 1

FP09-15 Map 1

